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EXTRAORDINARY

PART II—Section 3

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ELECTION COMMISSION, INDIA**NOTIFICATIONS***New Delhi, the 3rd February 1953*

S.R.O. 245.—WHEREAS the election of Shri Sanjeeva Shetty Kolkebal, Vakil, Coondapur, South Kanara District, as a member of the Madras Legislative Assembly from the Brahmavar Constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri B. Jagajeevandas Shetty, landholder and tile manufacturer, Brahmavar, South Kanara District, Madras State;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT MANGALORE

In the matter of the petition presented by Sri Jagajeevandas Shetty B., calling in question the election of Sri Sanjeeva Shetty Kolkebal as member of the Legislative Assembly of the State of Madras from the Brahmavar Constituency.

*Friday, the 23rd day of January 1953***PRESENT:**Sri P. T. Raman Nayar, I.C.S., *Chairman.***AND**

(1) Sri M. Ramachander, B.A., B.L.,

(2) Sri K. V. Suryanarayana Ayyar, B.A., B.L., *Members.***ELECTION PETITION No. 12 of 1952****BETWEEN:**

Jagajeevandas Shetty B., son of B. Mahabaleshwar Shetty, landholder and tile manufacturer, Brahmavar, South Kanara District. (Madras State)
—*Petitioner.*

AND

Sanjeeva Shetty Kolkebal, son of Sri Sowkoor Ramanna Shetty, Vakil, Coondapur, South Kanara District. (Madras State)—*Respondent.*

This petition coming on for trial on the 13th, 14th, 15th, 16th, 20th, 21st, 22nd, 23rd, 25th and 31st days of October and the 8th, 9th, 10th, 11th, 12th, 17th and 18th days of December 1952, and the 15th, 16th and 17th days of January 1953 in the presence of Sri K. S. Hegde and Sri B. S. Hegde advocates for the petitioner and Sri K. S. N. Adiga, Sri B. S. Bhasker Rai, and Sri A. Venkat Rao, advocates, for the respondent and having stood over for consideration till this day, the Tribunal made the following:

ORDER

The petitioner, the defeated candidate in the election to the Madras State Legislative Assembly held in January 1952 from the Brahmavar Constituency, South Kanara District, seeks to have it declared that the election of the respondent from the said constituency is void. The petitioner was put up by the Congress Party; the respondent by the Kisan Mazdoor Praja Party. The petitioner alleges that as a result of certain corrupt and illegal practices indulged in by the respondent and his supporters, the election is bad in law. The details of the said practices—in fact no illegal practice is disclosed, the allegations are all of corrupt practices—are set forth by him in the list annexed to the petition.

2. The respondent denies that he or his supporters indulged in corrupt or illegal practices and contends that the election is not liable to be set aside.

3. The following issues were framed by the Tribunal:—

1. Did the Heggade of Dharmastala support the candidature of the respondent? If so, did this amount to the corrupt practice of undue influence?
2. Did the practices set out in paragraphs 7 to 9 of the petition prevail at the election.
3. Did the practices referred to in issues 1 and 2 prevail on such an extensive scale as to render the election not a free election?
4. Did the respondent or his agent or any other persons with their connivance, obtain or procure, or attempt to obtain or procure the assistance of any Government servant for the furtherance of the prospects of the respondent's election, as alleged in paragraph 10 of the petition?
5. Were any of the corrupt practices referred to in issues 1 to 4 committed by the respondent or his agent or by any other person with their connivance?
6. Were the polling agents of the petitioner not allowed to function?
7. Are the allegations in paragraph 12 of the petition true? Is the petitioner precluded from leading evidence on these allegations for failure to furnish the particulars required by section 83(2) of the Representation of the People Act, 1951?
8. Was the election of the respondent procured or induced, or the result of the election materially affected by the corrupt and illegal practices and non-compliance with the Act or the rules or orders referred to in issues 4, 6 and 7?
9. To what relief?

4. Issues 1 to 3.—These issues may be considered together. The petitioner's case may be briefly stated: The corrupt practice is of the kind defined in section 123(2)(a)(ii) of the Representation of the People Act, 1951, that is to say, undue influence brought about by the candidate or his agent inducing or attempting to induce an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure and thereby interfering or attempting to interfere with the free exercise of the electoral right. This corrupt practice prevailed on an extensive scale at the election and, therefore, the election should be declared to be wholly void under section 100(1) of the Act. The corrupt practice referred to was committed by the returned candidate, his agents and supporters and, therefore, the election of the respondent has to be declared void.

5. The allegations on which the plea of corrupt practice is built up are as follows: The Sri Manjunatha Temple at Dharmastal is one of the famous temples of South India. The bulk of the votaries of the temple are from the northern taluks of the South Kanara district i.e. from the taluks of Udipi and Coondapoor. The Lord Manjunatha, the presiding deity of the said temple, is a household deity in those two taluks. The place is considered not only sacred but awe-inspiring and is looked upon with fear and reverence.

6. The trustee or the Hegde of the temple occupies a peculiar position. He is not merely the trustee of the temple in the ordinary sense but is considered as the mouthpiece of Lord Manjunatha and is said to have attracted the appellation of the "Manjunatha who speaks." The tradition of the place is also referred to in the petition, according to which the deities of the place deputed the Hegde as their sole representative and invested his utterances with infallibility. It is further alleged that it is the general belief, "that observance with faith of Sri Hegde's injunctions will win the Lord's grace, and, displeasure if the injunctions are not heeded."

7. The present Hegde of the temple, Sri D. Manjappa Hegde, who was examined on commission as P.W. 42, ascended the *gadi* in the year 1919. On the date of the petition he was a sitting M.L.C. He is a close friend of Sri K. B. Jinaraja Hegde (R.W. 43), who was the K.M.P.P. candidate for Parliament from the South Kanara North Constituency. It would appear that the Dharmastal Hegde (hereinafter referred to as the Hegde) issued a statement, Exhibit B2, on 24-10-1951 purporting to be the substance of the work done by him as member of the Madras Legislative Council. The petitioner would have it that the primary object of the statement "seems to be the condemnation of the Congress party". Later, on 7th December 1951, the Hegde issued an appeal, Exhibit A2, to the public to support the K.M.P. party. Thousands of copies of this statement were printed and widely circulated in the Udipi and the Coondapoor Taluks. Besides, the petitioner alleges, propaganda on behalf of the K.M.P.P. candidates was carried on in the Brahmavar Constituency in the name of the Hegde; prasadam purporting to be that of the Dharmastal temple was freely distributed and the voters of the Constituency were told that it was the injunction of the Hegde that they should vote for the K.M.P.P. candidate; further, that promises to vote for the K.M.P.P. candidates "were also extracted from the electors by touching cocoanuts in the name of Dharmastal". Such propaganda, according to the petitioner, was carried on on an extensive scale, the religious faith of the voters was exploited, awe was instilled into their minds, and "thousands of voters were induced to believe that he or she and their family will be rendered an object of divine displeasure or spiritual censure, if they do not vote for the K.M.P.P. candidate." Therefore, it was not a free and fair election.

8. The petitioner examined as many as 43 witnesses and the respondent 48. A fairly large volume of evidence relates to the character of the Manjunatha temple, whether it is a famous one, whether it is a household deity in the constituency, and whether the Hegde is identified by the public with the deity. On the evidence we have no doubt that the Dharmastal temple is an ancient and important temple in the district attracting a large number of worshippers and that the Manjunatha, the deity installed therein, is held in great regard and veneration.

9. The case of undue influence rests mainly on the position of the Hegde and how he is looked upon by the public. The petitioner states that the Hegde is a person having divine characteristics, that his utterances are invested with infallibility, that he is considered as a talking God and that his injunctions are obeyed abjectly and without question. Certain documents have been filed by the petitioner and he refers to them in this connection. They are Exhibits A18 to A23.

10. Exhibit A19 is a booklet entitled "Sri Kshetra Dharmastala" purporting to have been published in the year 1943 and this seems the main source of the allegations in the petition regarding the position occupied by the Hegde in relation to the deity. The foreword is written by the Hegde and the booklet itself, written by one of his own personal servants, is, it is apparent, inspired by him. Exhibits A18 and A22 are statements made by the Hegde in connection with attempts made by the Endowments Board to bring the temple, which had been exempted by Government from the operation of the Madras Hindu Religious Endowments Act, 1927, within its control. The Board had moved Government to cancel the exemption. Exhibits A20, A21 and A23 are orders passed by the Board in this connection. No doubt in those statements the Hegde arrogates to himself a position akin to the deity but that those are purely self-serving statements made with an eye to retain control for himself is apparent from the fact that in the same breath he asserts that the institution is a Jain institution and not a religious but a charitable institution. The orders of the Board are mainly repetitions of the Hegde's claims and we are not satisfied that the observations of the Board in dealing with them are really relevant. Moreover, the Board's orders themselves show that there are conflicting versions regarding the position of the Hegde. The previous statements of the Hegde are relevant only for the purpose of corroborating his present testimony. But he owns, "I do not claim any infallibility for my words. I am not conscious of that, but people may think so. There may be people who take my words as infallible and there may be people who do not do so".

11. In these circumstances we do not feel justified in basing any conclusion on these self-glorifying and self-serving statements.

12. The oral evidence about this divine character of the Hegde is conflicting. What emerges from the evidence is that the Hegde has a particular seat in the temple wherewith at the time of the *Mahapooja* he gives decisions on *hoilus* (plaints), if both parties appear and agree to abide by his decision. He does not issue any injunctions to the people at large but only gives decisions if they seek it at the temple. He himself says that there is no compulsion attached to his decisions in the temple. Whatever may be his position inside the temple, it does not appear that he is looked upon as a sacred personality outside. He is a Jain *grahastha* leading a family life. He is not a *sanyasin*; nor a religious leader like the *acharyas* or *matadhipathis*; and having regard to the accepted Hindu notions we find it difficult to believe that he is looked upon as divine or sacred.

13. The Hegde has, however, a status in the public life of this district. He was a member of the Madras Legislative Council from 1925 to 1926 and from 1937 to 1952. He was an elected member of the South Kanara District Board for some time and President of the South Kanara Landholders' Association for a number of years. He has founded certain educational institutions and has also been giving encouragement to the development of art, literature and industries. He seems to command considerable influence and his help in the elections was sought after by both the Congress party and the K.M.P. party. But apart from the fact that he is the trustee of a rich and well-known temple and that he holds a prominent position in the public life of this district, the evidence establishes no other feature from which we can infer that he was in a position to influence the voters.

14. As stated above, the petitioner's case of undue influence rests mainly upon the Hegde bearing a divine character and his injunctions having the force of law.

15. The learned counsel for the petitioner even took up the extreme position that the Hegde's support to any party or candidate *per se* constitutes the corrupt practice of undue influence. According to him there could be no free election, as the electors are liable to be influenced by the very position which the Hegde occupies. We are clear that this position is unsustainable. Incidentally it may be stated that the Hegde did stand for election twice to the Legislative Council and was returned. It is also significant that both those elections were contested, and that one of the charges before the Board was that he had spent Rs. 25,000 from out of the temple funds for his election.

16. The part played by the Hegde in the election and the support given by him to the candidate may be referred to with a view to examine the position as to whether, even assuming he occupies a sacred character, the case of corrupt practice is made out.

17. Exhibit B2, dated 24th October 1951, which is referred to above, was issued to the press by the Hegde on the eve of the elections. According to the petitioner, the primary object of that publication was the condemnation of the Congress party. Thereafter the Hegde issued Exhibit A1 under date 7th December 1951, the reason in his own words being, "I came to know that false rumours were spread that I support the Congress and to dispel that I issued Exhibit A1". Exhibit A1 appeals to the people to lend their support ungrudgingly to the K.M.P. party. This appeal to the public was issued by him, and could be deemed to have been issued by him, only in his capacity as a public man and as one taking a leading part in the public life of this district. In fact in his letter, Exhibit A13, dated 18th December 1951, sent to the petitioner in reply to his letter, Exhibit A26, this is what the Hegde says: "This publication (Exhibit A1) is not contrary to my previous publication. It is not improper (for me) to support a party..... There is no meaning in your statement that I should not take part in the election, merely because of my connection with the temple". There can, therefore, be nothing objectionable in the attitude taken up by the Hegde in asking for support on behalf of any political party. And we may observe that the appeals issued by the Hegde are in his personal name, D. Manjaya Hegde, and that while they refer to the fact that he is an M.L.C. they are silent about his trusteeship of the temple.

18. The petitioner's case that propaganda was done in the name of the Hegde may now be examined. According to the petitioner there were two stages in this propaganda. The first stage was between the 12th and the 22nd December 1951, and the second between the 29th and the 31st December 1951. In the first stage, the Dharmastala prasadam was distributed by volunteers and workers on behalf of the K.M.P.P. candidate in the Brahmarav Constituency and promises to vote were extracted by the touching of cocoanuts. Item No. 6 in the list attached to

the petition gives the details of the propaganda regarding this stage. The names of the villages wherein this propaganda was carried on and the persons who did the propaganda are mentioned therein. The petitioner states that he wrote to the Hegde inviting his attention to these corrupt practices (Exhibit A26) to which the Hegde replied (Exhibit A13) denying the allegations. The said denial of the Hegde was published all over. Thereafter, the petitioner says, there was a lull in the aforesaid activities; but between the 29th and the 31st of December, namely, the second stage, a new *modus operandi* was adopted. The Shanbhogue of the Dharmastala temple, one Narnappayya, R.W. 48, accompanied by the respondent and his friends extensively toured the constituency, distributed the prasadam and carried on the propaganda. Item 7 in the list gives the details thereof.

19. The petitioner's learned advocate, while dealing with this aspect of the case, laid considerable emphasis on the circumstance that reference to the propaganda in the name of the Dharmastala temple was made, even at the time, by the petitioner in his letter to the Hegde, Exhibit A26, dated 17th December 1951 and also by P.W. 11, who was the Congress candidate to the State Assembly in the Coondapoor Constituency, in his telegram, Exhibit A24, to the Hegde of the same date. The petitioner's advocate would argue that it is extremely unlikely that such a complaint would have been made, unless there was some truth in it. Objection on the ground that the complaint is an after-thought cannot be sustained; and these documents, Exhibits A26 and A24, afford corroborative evidence of considerable value to the case spoken to by the petitioner and P.W. 11. Let us examine this position.

20. The petitioner, P.W. 43, states that on or about the 10th or 11th of December he got complaints about the distribution of prasadam from P.W. 15 who told him that he himself had personally seen the prasadam being distributed. The letter to the Hegde, Exhibit A26, was prompted by the information so conveyed by P.W. 15 as also by P.Ws. 30 and 41. It is significant that, though he is said to have received the complaint on or about the 10th or the 11th December, he did not choose to take any action till the 17th of December. The petitioner frankly admits that he has no personal knowledge about the distribution of prasadam or of this kind of propaganda. P.W. 15, who was a Congress worker and who did propaganda on behalf of the petitioner, says that he toured about seven villages and visited a large number of houses where he was told by the inmates about the distribution of prasadam. He categorically states that he is not personally aware of the said propaganda or of the distribution of prasadam and that his information was only hearsay. This directly contradicts the evidence of the petitioner, according to whom P.W. 15 was an eye witness. The two others, P.Ws. 30 and 41, who conveyed similar information to the petitioner are also persons who did election propaganda on behalf of the petitioner and toured several villages visiting over 1,000 houses each. They are also definite that their information was only hearsay and not based upon personal knowledge. It is rather curious that these three workers, who toured extensively in the constituency, did not at any time come across a single instance of a K.M.P.P. worker distributing prasadam or carrying on propaganda in the name of the Hegde.

21. The evidence of P.W. 11, who complained to the Hegde in his telegram, Exhibit A24, is of little avail. He had no personal knowledge of this propaganda and he wrote the letter on the information conveyed to him by some of his workers. Those workers are not examined, and, we do not know who they are.

22. It is as well to state that the Hegde came forward immediately with an emphatic repudiation of the charge. His reply to P.W. 11, Exhibit A25, is as follows:

"Allegations false—nobody sent to distribute prasadam—it is not done—it will never be done—it is against prestige and rules."

Nothing can be more emphatic. In his reply to the petitioner (Exhibit A27) the Hegde state equally emphatically that, "to mislead and frighten people in the name of God is against law and conscience and no right thinking person will do or encourage this. It is no wonder that during elections one party accuses another like this."

23. It is quite possible that after the publication throughout the constituency of the copies of Exhibit A1 by which the Hegde announced his support for the K.M.P. party, considerable flutter and perhaps nervousness prevailed among the workers of the Congress candidate. Some exaggerated reports by the workers about the propaganda carried on by the K.M.P.P. workers with reference to the Hegde might have been carried to the respective candidates. The K.M.P.P. workers would have made capital of the open support lent by the Hegde to their party.

In these circumstances much reliance cannot be placed on the aforesaid documents, namely, Exhibits A26 and A24.

24. The learned advocate for the petitioner next relies on the evidence of the witnesses examined in the case. In particular and with regard to the propaganda between the 12th December and the 22nd December 1951 he relies on the evidence of P.Ws. 14, 17, 18, 21, 25 to 29, 33 to 36 and 40; he relies on the evidence of P.Ws. 5 and 9 with regard to the case that promises were extracted on coconuts; with regard to the propaganda between the 29th and the 31st December during which period R.W. 43, the Shanbhogue of Dharmastal is said to have toured the constituency accompanied by the respondent, he relies upon the evidence of P.Ws. 3 to 5, 8, 13, 16, 22 to 24, 32 and 39. There are five other witnesses, P.Ws. 15, 30, 31, 38 and 41 who, according to him, speak to the effect produced on the electors by the aforesaid objectionable propaganda, they themselves not having any personal knowledge thereof.

25. It is contended that the bulk of these witnesses are disinterested, independent persons who belong to different professions and different classes of society, and, that there is no reason why they should give false evidence.

26. Before dealing with the evidence of these witnesses we would like to refer to the point raised on behalf of the respondent that the pleadings in the case do not disclose the commission of the corrupt practice now alleged and that the evidence of the witnesses has to be ruled out.

27. As stated above, the allegations in the petition in paragraphs 7 to 9 and in items 6 and 7 of the list are that prasadam was distributed and the voters told that it was the injunction of the Hegde that they should vote for the K.M.P.P. candidate. It is argued by the learned counsel for the respondent that the pleadings as set forth only disclose the case that the Hegde issued a direction to the people to vote in favour of a particular candidate. There is no case that any threat was held out, that if they did not vote accordingly, spiritual injury would accrue to them, or that they would incur divine displeasure.

28. The learned advocate for the petitioner, in answer, invited our attention to certain passages in the petition which, according to him, contain the necessary averment. In particular he relies upon the passage in paragraph 7 which is as follows:

"The religious faith of the voter was exploited and the awe was instilled into their minds of the consequences of disobeying the injunctions of the 'Heggade'".

Also the passage in paragraph 9 which is as follows:—

"There was a widespread feeling in the Constituency specially in the minds of the illiterate and poor voters that in voting for the K.M.P. candidates, they are obeying the orders of Lord Manjunath and earn his grace. The aforesaid propaganda indulged by the respondent and his supporters had coerced and intimidated a vast section of the voters to vote in favour of the respondent. It had induced thousands of voters to believe that he or she and their family will be rendered an object of Divine displeasure or spiritual censure, if they do not vote for the K.M.P. candidates."

29. We agree with the contention of the respondent's advocate that the aforesaid passages in the context in which they appear only set forth what, according to the petitioner, was the effect of the propaganda carried on by the respondent. They do not convey that there was any representation made to the voters that it was part of the Hegde's injunction that if they did not abide by his wishes they would be subject to divine displeasure or spiritual censure. The petitioner has an alternative argument that it was implicit in the direction to vote for a particular candidate, that disobedience thereof would be met with spiritual punishment. We feel that we would not be justified in accepting this argument. Section 123(2) makes the position clear that what is relevant is the intention of the person who actually is charged with having committed the corrupt practice. The words actually used by him are very material. Proceedings of this nature are quasi-criminal in character; more so, in cases where allegations of corrupt or illegal practices are made the basis of the action. The effect produced on the elector is not the crucial thing, except in so far as the election is sought to be set aside on the ground that it was not a free one by reason that the corrupt practice has extensively prevailed. But even there, the intention of the person charged with the commission of the corrupt practice is an essential factor.

30. It is clear law that, however eminent a person might be, whether in the religious or secular field, he is as much entitled as any other to take part in elections, and to advise or direct electors in the matter of the exercise of their franchise. Several cases have come up in England where the part played by the clergy was called in question and actions ought to be set aside on the ground that there was undue influence of the kind with which we are now concerned. Those cases were considered in the light of the statutory provision in the Corrupt and Illegal Practices Act of 1854 which was later reproduced in the Representation of People Act, 1949. Section 2, which defines undue influence, is to this effect:

"Every person who shall directly or indirectly . . . or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, . . . shall be guilty of undue influence."

We may in this connection refer to a passage occurring in the judgment in *In Longford* (2 O'M & H. 16). Fitzgerald, J. said,

"The Catholic priest has, and he ought to have, great influence. His position, his sacred character etc., ensure it to him. . . . In the proper exercise of that influence on electors the priest may counsel, advise, recommend, entreat, and point out the true line of moral duty, and explain why one candidate should be preferred to another, and may, if he thinks fit, throw the whole weight of his character into the scale, but he may not appeal to the fears, or terrors, or superstition, of those he addresses." (*Vide* page 515 of Rogers on Elections, Volume II, Nineteenth Edition).

Again O'Brien J., in the judgment in *In South Meath* (4 O. & H. at 132) referring to the aforesaid judgment of Fitzgerald, J. stated as follows:—

"It is the undoubted right of the clergy to canvass and induce persons to vote in a particular way, but that it is not lawful to declare it to be a sin to vote in a different manner or to threaten to refuse the Sacraments to a person for so doing. . . . A priest is entitled, as well as any other subject, to have his political opinions, and to exercise his legitimate influence legitimately. It is a mistake to suppose that on a man taking holy orders he ceases to be a citizen, or ceases to be clothed with all the privileges and rights of a citizen." (*Vide* page 127 of the Law of Parliamentary Elections and Election Petitions by Sir Hugh Fraser, Third Edition.)

It is unnecessary to multiply instances. As stated by Willes, J.—

"The law cannot strike at the existence of influence. . . . It is the abuse of influence with which alone the law can deal. Influence cannot be said to be abused because it exists and operates." (*Vide* pages 502 and 503 of Rogers on Elections, Volume II, Nineteenth Edition.)

31. The law in India is just the same. There are several cases [decided under statutory provisions the same as section 123(2)] dealing with spiritual influence said to have been exercised by Muslim divines or Pirs. The case of *Malik Barkat Ali V. Maulvi Muharram Ali Chishti* relating to elections to the Punjab Legislative Council, the judgment in which is reported at page 469 of Hammond's Election Cases, is in point. One of the grounds on which the election in that case was impugned was "the exercise of spiritual influence in the way of threats by certain Pirs on the inducement of the respondent and his agent." What was proved in that case was that the Pirs in question issued instructions asking people to vote for a particular candidate. Referring to the contention that such instructions amounted to undue influence the Tribunal has observed as follows at page 470:

"The position taken up by the petitioner is that, even though no actual threat was held out to any one by the two Pirs above named, yet the effect of the instructions, which they gave to their followers, would be such as to produce on the minds of those followers the fear that they would be committing a sin if they did not vote for the respondent, drawing a further inference therefrom that the incurring of divine displeasure would result from the commission of this sin. In our view this position is quite untenable, if only because, when it is sought to bring home a corrupt practice to any one, it is the action of person which must be primarily looked to; corrupt intention is the essential element and no such intention has been shown as regards these Pirs. The question of

what the persons addressed thought is a secondary one and does not arise if no corrupt intention on the part of the Pirs is shown."

32. The learned advocate for the petitioner, next invited our attention to the following passage occurring at page 283 of Law of Elections and Election Petitions in India by Nanak Chand Pandit;

"A threat or inducement to vote or not to vote must be by holding out an inducement that if the vote was not given in a particular manner, the voter would be rendered an object of divine displeasure or spiritual censure. From the language adopted by the statute it would appear that the holding out of an inducement of pious hopes, spiritual benefits, divine pleasure and invoking blessings of the gods would not be undue influence. The question however is not free from doubt. The proviso 1(b) to Schedule I [Proviso (a)(i) to clause 2 of section 123 of the Representation of People Act, 1951] no doubt attempts to limit spiritual undue influence by making injury, not benefit, punishment not reward, that which is the subject of fear, instead of hope alone undue influence. But it must be remembered that the Proviso is without prejudice to the generality of the provisions and the general provision is that any direct or indirect interference or an attempt at interference with the exercise of any electoral right is undue influence. In view of this provision it is difficult to see how the holding out, of pious hopes of spiritual reward here and hereafter and supporting the drooping spirits by unfolding the prospects of eternal happiness, by a priest with a view to influence a vote is not undue influence."

33. On the basis of the interpretation of the proviso as set forth above, the argument was advanced that even in the absence of spiritual threat the holding out of an inducement of pious hopes, spiritual benefits, divine pleasure etc. would constitute undue influence. We do not agree with this interpretation of the proviso. There are several varieties of undue influence known to law. If, however, a case of undue influence within the meaning of section 123(2) of the Act is sought to be rested on the use of spiritual authority, then the proviso comes in, and in our view restricts it to cases where threats of divine displeasure or spiritual censure (not promises of reward or spiritual grace) is the gist of the action. The rule that the threat to inflict spiritual injury is an essential ingredient is a very old rule which was recognised and acted upon in England even under the common law. The Indian law has been the same all along. It is unnecessary to pursue this aspect further, as, the petition does not allege that spiritual reward or divine blessing or benefit was held out as part of the propaganda. In fact at one stage we thought that the learned advocate for the petitioner conceded that he rested his case solely upon undue influence involving threat of divine displeasure. There is, it is true, the allegation in the petition that prasadam was distributed and promises extracted on cocoanuts. But neither the one nor the other involves the threat of any spiritual injury. Prasadam carries with it the Lord's grace or blessing and not a threat and the coconut is symbolic of the solemnity of the promise. The contention, therefore, of the learned counsel for the respondent that no case of undue influence is disclosed in the pleadings is not without force. We are, however, not inclined to dispose of these issues on this technical point. And accordingly we proceed to consider the evidence of the witnesses referred to above.

34. We have examined the evidence of these witnesses carefully and are satisfied that it is unreliable. We do not consider it necessary to deal with each of these witnesses separately. There are, however, certain broad and outstanding features which are common to all these witnesses and which only confirm our view that their evidence cannot be accepted. Firstly, there is no allegation in the petition nor is there any evidence, that the Hegde is personally interested in the respondent. The petition states that Shri K. B. Jinaraja Hegde, R.W. 43, is a close friend of the Hegde and also his legal adviser. He (Sri K. B. Jinaraja Hegde) was a K.M.P.P. candidate for the Parliamentary seat. The immediate cause for the Hegde to issue an appeal for the support of the K.M.P. party was the circumstance that his friend and legal adviser, R.W. 43, was standing as a candidate. The other allegations in the petition, reference to which has already been made, only show that it was the injunction of the Hegde that they should vote for the K.M.P.P. candidates. No doubt there is an allegation in paragraph 9 of the petition that the Shanbhogue of the Dharmastala temple, R.W. 48, accompanied by the respondent toured the constituency. We shall refer to this allegation—which we may state has not been proved—later. There is no allegation that the respondent was set up by the Hegde. It is, however, remarkable that excepting 2 or 3 witnesses from among the first group (*vide* paragraph 24 above) all the others have given evidence that the respondent's workers approached them for their vote telling them that the respondent had been

put up by the Hegde. This is obviously an improvement designed to make out that the respondent was privy to the corrupt practice. The easy way of proving that fact is to attempt to bring the respondent in direct relation with the Hegde. As stated above, this case is an after-thought. The Hegde as P.W. 42 was not asked whether he set up the respondent. In fact, there is no evidence let in to show that any sort of relationship existed between the Hegde and the respondent. We have no doubt that this is a case of the witnesses having fallen into line.

35. Secondly, the nature of the prasadam said to have been distributed is another feature deserving special mention. The case in the petition is that it was *vibhoothi* (ash) that was distributed all over as the prasadam from the Dharmastal temple. Item 6 in the list of particulars attached to the petition states that ash purporting to be prasadam from the Sri Dharmastal temple was freely distributed in the constituency between 12th December 1951 and 22nd December 1951. About 75 villages are mentioned in which it was so distributed. On the evidence it is clear that *vibhoothi* is not the prasadam of the Dharmastal temple. In this matter we see no reason for not accepting the evidence of the Hegde, P.W. 42, who says that the prasadam given there is *gandha* prasadam (sandal paste) and not *vibhoothi*. As trustee of the temple he is best qualified to speak on the point, and, occupying that position, we do not think that he would speak falsely on a matter which must be of general knowledge. The petitioner himself examined as P.W. 43 says that, when he sent to Dharmastal in 1950, he was given sandal paste as prasadam. In the petition he was apparently obliged to stick to *vibhoothi* as the prasadam that was distributed by reason of the circumstance that he had already committed himself by mentioning *vibhoothi* as the prasadam in his letter to the Hegde, Exhibit A26, dated 17th December 1951. When the witnesses on the petitioner's side were being examined, it was put to them by the learned counsel for the respondent in the course of the cross-examination that *vibhoothi* was not the prasadam of Dharmastal but sandal paste. The result was that while some of them, namely, P.Ws. 4, 8, 21, 29 and 33 say that *vibhoothi* was distributed, some others, namely, P.Ws. 14 and 29 say that sandal paste and *kumkum* were also distributed. We think it extremely unlikely that even if there was distribution of prasadam, *vibhoothi* would have been used. The votaries of the temple must have known the practices prevalent in the temple and that *vibhoothi* was not issued as prasadam therein. Any attempt to pass off *vibhoothi* as the Dharmastal prasadam is bound to fail, and, by itself is sufficient to discredit the persons responsible for it in the eyes of the votaries. If the object in distributing prasadam is to gain the support and sympathy of the voters, it is certain to be defeated. Least of all would the Hegde or any person sent by him or acting under his orders have attempted to pass off *vibhoothi* as the prasadam.

36. Thirdly, in an earlier paragraph we have referred to the fact that the petition does not disclose that the Hegde's injunctions included threat of any divine punishment or censure. There are, however, some witnesses who refer to threats of "trouble." P.W. 8, the Patel of Harady who has dealings with the petitioner, P.W. 17, who, though illiterate stated that he understood that the *vibhoothi* that was distributed was Dharmastal prasadam from the hand-bill that was given at the time, and P.Ws. 18 and 19 are the main witnesses who speak to the alleged threat. A fairly large number of the witnesses, however, do not refer to this threat at all. It would, therefore, appear from the evidence of the petitioner's witnesses themselves that there was no threat of divine displeasure or spiritual censure.

37. We shall now deal with the case that "promises were extracted on cocoanuts". Paragraph 7 of the petition states that in several cases cocoanuts were used and item 6 in the list of particulars mentions that the distribution of prasadam and the extraction of promises on cocoanuts went on between the 12th December and the 22nd of December and in about 75 villages. The only evidence that is let in relates to two instances both of them alleged to have taken place in Varamballi village. P.Ws. 5 and 9 are the witnesses examined in this connection. Their evidence is that one Anthayya Shetty, R.W. 30, who was working on behalf of the respondent was the person who did this propaganda. P.W. 9's evidence is that he was not asked to take the oath on the cocoanut but that R.W. 30 asked him to vote for the respondent and then proceeded to the opposite house belonging to one Koraga Shettigara. It was from him that R.W. 30 got the promise on the cocoanut. P.W. 9 himself was not present at the time. Koraga Shettigara has not been examined. P.W. 9's evidence is, therefore, valueless; and that leaves only the evidence of P.W. 5. R.W. 30 denies having gone to P.W. 5 or P.W. 9 or having used cocoanut at all. One outstanding feature is that as against several cases said to have happened in about 75 villages during the period between the 12th and the 22nd of December only in one instance is there evidence forthcoming. We feel justified in concluding that the case regarding cocoanuts is entirely untrue.

38. We shall next examine the evidence of propaganda in the second stage, i.e. between the 29th and the 31st of December. The witnesses who speak to it are P.Ws. 3 to 5, 8, 13, 16, 22 to 24, 32 and 39. The case as set forth in the petition is that the Shanbhogue of the Dharmastal temple Narnappayya, R.W. 48, accompanied by the respondent and his friends, extensively toured the constituency and contacted a large number of voters during this period. There are several features which render this story unworthy of credit. This propaganda is said to have been carried on in about 28 villages, after the lull in the activities created by the publication of the reply of the Hegde, namely, Exhibits A6(b) and A27. The petition states that it was by way of a new *modus operandi* that the Shanbhogue toured the constituency along with the respondent. It is not clear why such a *modus* was adopted. It is clear from the correspondence that passed between the petitioner and Sri Manjappa Shetty on the one side and the Hegde on the other that the Hegde had openly denounced any propaganda in the name of the temple either with prasadam and cocoanuts or without them. And he had condemned it in no uncertain terms. He had also made it clear that he had not sent any one to do propaganda on behalf of the candidates except that the Shanbhogue, R.W. 48, was sent by him on behalf of Sri K. B. Jinaraja Hegde, R.W. 43 (his friend and legal adviser) in order to introduce him to some of the voters. The petitioner's workers in the field, P.Ws. 15, 30, 31, 38 and 41 state that this open declaration by the Hegde was printed and widely circulated all over the constituency and that they also took care to inform the voters of the said declaration in the course of their propaganda. It must, therefore, be taken that at any rate before the 29th of December it was widely known that the Hegde had set himself against any propaganda in his name or in the name of the temple by the use of prasadam or cocoanuts. It must also have become known that he considered it to be against rules as stated in his telegram. Against this background the case that the Shanbhogue of Dharmastal did propaganda between the 29th and 31st December stands discredited. No votary of the temple would have tolerated any propaganda by the Shanbhogue or by any other person after the Hegde's open disclaimer. If, according to the petitioner, the Hegde's words are so sacred that no one dare disobey them, how comes it that this propaganda was started and how comes it that the electors tolerated such propaganda? R.W. 48 and the respondent would have been denounced as imposters. For this reason alone this case has to be rejected.

39. The witnesses, who speak to this propaganda, are unreliable for one reason or another. P.Ws. 3, 8 and 23 are persons who do not know the respondent or who saw him only for the first time that day. P.W. 16 was the petitioner's polling agent and was besides a surety for Kundar Tejappa Shetty who, it is admitted, is a partisan of the petitioner. P.W. 13, who is a teacher, says that he happened to meet the Shanbhogue and the respondent in the course of a midday walk on a sunny Sunday. P.W. 39 does not remember the date or the day on which these two people visited him. One is inclined to draw the inference that this case of propaganda just on the eve of the elections was thought of with a view to lend strength to the case that the election was not a free election and also perhaps to directly connect the respondent with this propaganda. Even according to the petitioner after the public disavowal by the Hegde there was a lull and the effect, if any, created by the propaganda in the name of Dharmastal must have faded out. It is obvious that no election can be held to be bad on the ground that it was not a free election unless the threat of divine displeasure was operative at the time of the election. The Shanbhogue, who has been examined as R.W. 48, denies that he did the propaganda or accompanied the respondent. The respondent has given evidence to the same effect. We see no reason to disbelieve their evidence. It is most unlikely that the respondent, who knew of the charges levelled by the petitioner, and who must have known that the petitioner would be on the watch would have been so reckless or foolish as to be seen in the company of the Shanbhogue.

40. The other set of witnesses relied upon by the petitioner consists of P.Ws. 15, 30, 31, 38 and 41. They are the petitioner's workers and they say that they toured several villages, made house to house visits each visiting about 1,000 or 1,500 houses. They are examined to support the case that propaganda was done by the distribution of prasadams, by using cocoanuts etc. It is not their case that they have personal knowledge of any such propaganda. During all their extensive tours in the constituency it is curious that they did not come across any instance of this objectionable propaganda which was carried on according to the petitioner on an extensive scale by a large number of persons all over the constituency. This is an important aspect which lends support to the conclusion that the case of the petitioner is not true. The evidence of these witnesses is however relied upon to prove the effect of the propaganda in the constituency. We need hardly say that the

evidence cannot be accepted or acted upon. It is hearsay and consists of expressions of opinions or beliefs or impressions which are irrelevant and inadmissible.

41. Before leaving this aspect of the case, we would also refer to the evidence of the witnesses examined by the respondent, in particular to R.W. 43, Sri K. B. Jinaraja Hegde who was the Parliamentary candidate and who toured the constituency and addressed public meetings. He asserts that there was no propaganda in the name of Dharmastal. R.W. 44, who appears to be a respectable person and not in any way connected with the respondent, and R.W. 47 a Praja Party worker and an advocate practising at Coondapoor have also supported the respondent's case. There are yet others such as R.Ws. 20, 22, 24, 27 and 31 whose evidence also we see no reason to disbelieve. The respondent himself has denied that he ever took any part in any such propaganda.

42. In the circumstances and for the reasons given above our findings on issues 1 to 3 are as follows:

On the first part of issue 1 we hold that in so far as the Dharmastal Hegde appealed to the voters to support the K.M.P.P. candidates, to that extent he must be deemed to have supported the candidature of the respondent who is a Praja Party candidate. But he did so in his personal capacity, not as the Hegde of the temple. On the second part we hold that the said support does not amount to the corrupt practice of undue influence.

On the second issue we hold that the practices set out in paragraphs 7 to 9 of the petition did not prevail at the election.

It follows that issue 3 must be answered in the negative.

43. On issue 5 also, in so far as it relates to issues 1 to 3, our finding is in the negative.

44. Issue 4.—This issue arises out of the allegation in paragraph 10 of the petition. The relevant passage is as follows:

"He (the respondent) and his relations had obtained and procured or had abetted or attempted to obtain or procure the assistance for the furtherance of the prospects of the candidate's (respondent's) election from persons serving under the Government of the State. Several village head-men, Karnams and taleyaris were made to work actively for the respondent."

In item 10 of the list attached to the petition it is stated:

"Sri Huyur Hirianna Shetty, the brother-in-law of the respondent and the village headman of Huyur village was actively canvassing for the respondent so also his Taleyari. The Shanbhogue of Nalkur village, Sri Shivarama Karanth was also actively working for the respondent. The petitioner was able to get at some of the identification slips written and issued by him. They are annexed to the list."

The relevant section in the Act is section 123(8) which runs thus:

"The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State."

is a major corrupt practice. Explanation (b) to sub-section (8) shows that a village Patel, Taleyari, Karnam, etc., also come under the definition of a person serving under the Government of a State.

45. The learned counsel for the respondent has raised a preliminary objection that the allegation regarding the commission of this corrupt practice is bad for want of particulars as to the date and place of commission of the said acts and, therefore, should be dismissed in limine. (Vide paragraph 19 of his written statement). He relies upon section 83(2) of the Act which provides that the petition shall be accompanied by a list setting forth full particulars of any corrupt practice, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice. It is obvious that the allegations in the petition and in the list do not satisfy this rule. It is not stated where and when and with reference to which of the electors the village headman of Huyur canvassed for the respondent.

And with regard to the Shanbhogue of Nalkur, apart from referring to some of the identification slips said to have been written and issued by him, it does not give the aforesaid particulars. The rule enunciated in section 83(2) is a salutary rule and is intended to avoid surprises to the opposite party and manipulations and developments on the case as originally presented. Our attention was invited to several decisions under the election law where this rule has been applied more or less strictly and where the allegations were ordered to be struck off for want of particulars. There is considerable force in the argument of the respondent's advocate. The objection regarding want of particulars was taken even in the counter statement. The petitioner has not put in any application to permit him to furnish further particulars as indicated in sub-section (3) of section 83. However, in view of our conclusion regarding the evidence adduced about the commission of this corrupt practice, we do not think it necessary to dispose of this issue by striking off the allegations. On examining the evidence adduced on the point we find that the case of corrupt practice under section 123(8) has not been proved.

46. The oral evidence regarding the Nalkur Shanbhogue, Shivarama Karanth, is that of P.Ws. 6, 7 and 12. P.W. 6 states that the Nalkur Shanbhogue paid him two visits. At the earlier visit the Shanbhogue only asked for his vote in favour of the respondent. The later visit was undertaken at about 10 p.m. on a certain day. The Shanbhogue was accompanied by another person whose identity the witness does not know. The Shanbhogue woke him up and with the aid of the lantern which he carried filled up a printed form and made it over to him. This form the witness handed over to the petitioner's man after the elections and it is produced herein, as Exhibit A-7. The same process is repeated with reference to P.W. 7 who lives about two furlongs away from P.W. 6's house. The visit was at about 10 p.m.; the Shanbhogue was accompanied by one Bhujanga Shetty and others; and the printed card was filled up in the witness's presence and with the aid of the lantern. The card so delivered to him is produced by petitioner and marked as Exhibit A-8. The evidence of these two witnesses is totally unreliable. There is no reason why for filling up these cards, the Shanbhogue should go to the houses of these persons and that at 10 o'clock in the night. Both the witnesses admit that the Shanbhogue had a copy of the electoral roll with reference to which he filled up the particulars. P.W. 6 definitely states that he supplied no information to the Shanbhogue to enable him to write out the forms. The obvious thing to do would be to post all these forms at some convenient place with reference to the roll and then to distribute them—not to fill them up at each house sitting on the floor and with the aid of a lantern. The evidence is so artificial and tell-tale that we find it impossible to accept it. The learned counsel for the petitioner, however vehemently argues that the respondent should have examined the Shanbhogue to disprove the case that Exhibits A-7 and A-8 are in his handwriting. The respondent states in his evidence that the Shanbhogue expressed his unwillingness to give evidence. However that might be, since we disbelieve the evidence of P.Ws. 6 and 7, it necessarily follows that the handwriting in Exhibits A-7 and A-8 has not been proved to be that of the Shanbhogue. There are other ways by which the petitioner could have proved that Exhibits A-7 and A-8 are in the handwriting of the Shanbhogue such as by producing documents which admittedly contain his handwriting and by offering them for comparison. As it is, his case must stand or fall on the evidence of P.Ws. 6 and 7. It is not as if these witnesses are persons who are acquainted with the handwriting of the Shanbhogue. In this view of the matter we do not see any point in the contention that the Shanbhogue was not examined on behalf of the respondent. Assuming for the sake of argument that the Shanbhogue of the village filled up the particulars in the cards, Exhibits A-7 and A-8, does it by itself amount to rendering any assistance for the furtherance of the prospects of the respondent's election? We are of opinion that it does not. We may state, however, that the attempt made by the respondent to prove that Exhibits A-7 and A-8 are not in the handwriting of the Shanbhogue has failed. But that does not affect our conclusion. The other witness, P.W. 12, who is an ardent Congress worker says that the Shanbhogue, Shivarama Karanth, went to him accompanied by the respondent about 15 or 20 days before the election and solicited his vote. On the face of it it looks improbable that the respondent should have gone with the Shanbhogue to a person so well-known as an ardent Congress worker.

47. The evidence regarding the Huyur Patel, Hirianna Shetty, is that of P.Ws. 24 and 35 both of whom state that about 10 or 15 days before the elections the Patel went to them accompanied by the respondent asking for their votes. It so happens that the Huyur Patel is a brother-in-law of the respondent. It does not follow therefrom that the Patel must have worked for the respondent. P.W. 24 is a man of no status. P.W. 35 is not in a position to give either the date or the time of the

Patel's visit. He would say that about three or four persons whom he is not able to identify accompanied the Patel. The evidence is vague and has to be rejected.

48. The circumstance that in the petition the petitioner has not chosen to give particulars about the commission of this corrupt practice by mentioning the names of persons the canvassing of whose votes by the village officers is the gravamen of the charge, also tells against the evidence adduced in support thereof. The petitioner has stated in his evidence that he gathered all the particulars and all the information necessary before he filed the petition. Nevertheless, he has not chosen to set forth the particulars in the petition—and no reason is given why he did not do so.

49. In the circumstances we answer issue 4 in the negative.

50. Our finding on issue 5, in so far as it relates to issue 4, must also be in the negative.

51. Issue 6.—No evidence was adduced on this issue and our finding is in the negative.

52. Issue 7.—The allegations in paragraph 12 of the petition are singularly vague and they are liable to be struck off. However, the petitioner has not chosen to adduce any evidence on the matters dealt with in paragraph 12, and, his advocate in the course of his arguments stated that he does not rest his case on these allegations. Our finding on the first part of issue 7 is that the allegations in paragraph 12 of the petition have not been proved. Our finding on the second part is in the affirmative.

53. Issue 8.—Our finding on issue 8 is in the negative.

54. Before concluding we would refer to an argument advanced by the learned counsel for the respondent that the petition is bad for non-joinder under section 82 of the Act. It is admitted that there was one other duly nominated candidate who, however, is not impleaded in this petition. This objection was not taken either in the written statement or at the time when the issues were settled. The provisions of Order I Rules 9 and 13 C.P.C. apply and we hold that the respondent is not entitled to raise this plea at this late stage. We may also state that the candidate in question withdrew from the election and that his presence is not necessary for the disposal of the case since no relief is claimed as against him.

55. In the result the petition falls and is dismissed. We order the petitioner to pay the respondent the sum of Rs. 1,000 for his costs inclusive of advocate's fee. This sum will bear interest at 3 per cent. per annum from this day.

Dictated to the shorthand writer, transcribed by him, and pronounced in open Court, this, the 23rd day of January 1953.

(Sd.) P. T. RAMAN NAYAR, *Chairman.*

(1) (Sd.) M. RAMACHANDER }
(2) (Sd.) K. V. SURYANARAYANA, AYYAR } *Members.*

APPENDIX

The following exhibits were filed:

FOR PETITIONER

- A-1 (7-12-1951).—Copy of a statement of Sri Dharmastala Manjajya Hegde, M.L.C., printed by the Udaya Printery, Mangalore.
- A-2 (7-12-1951).—Copy of a statement of Sri Dharmastala Manjajya Hegde, M.L.C., printed by the Kalyana Press, Udipi.
- A-3 (December 1951).—Copy of publication entitled "Truth of Dharmastal Hegde's statement", printed by the Kalyana Press, Udipi.
- A-4 (7-12-1951).—Photo copy of statement of Dharmastala Manjajya Hegde.
- A-5 (7-12-1951).—Printed copy of statement of Dharmastala Manjajya Hegde.
- A-6.—Handbill No. 10 by Kisan Mazdoor Praja Party.
- A-6(a).—Portion marked in Exhibit A-6 forming copy of a telegram, dated 17-12-1951 said to have been sent by Sri Y. Manjajya Shetty to Sri Dharmastala Manjajya Hegde with Canarese translation.

- A-6(b).—Portion marked in Exhibit A-6 forming copy of the telegram, dated 18-12-1951 said to have been sent by Sri D. Manjayya Hegde to Sri Y. Manjayya Shetty with Canarese translation.
- A-6(c).—Portion marked in Exhibit A-6 forming copy of a letter, dated 17-12-1951 said to have been written by Sri B. Jagajivandas Shetty (Petitioner) to Sri Dharmastal Manjayya Hegde.
- A-7.—Identification slip (with the picture of house on one page) issued on behalf of the respondent and relating to house No. 4-11 of P.W. 6, Srinivasa Udupa of Nalkur village
- A-8.—Identification slip (with the picture of house on one page) issued on behalf of the respondent and relating to house No. 4-31 of P.W. 7, Subbanna Shastry of Nalkur village.
- A-9.—Copy of publication issued by the K.M.P. Party, Coondapur, containing Sri D. Manjayya Hegde's reply letter, dated 24-12-1951 to Halsanad Subba Rao.
- A-10 (7-12-1951).—Copy of statement of Sri Dharmastala Manjayya Hegde, M.L.C., printed by A. P. & P. Ltd., Coondapur.
- A-11 (2-1-1952).—Statement of Sri G. V. Aithala recorded by the Presiding Officer at Saligram—Station No. 75.
- A-12 (2-1-1952).—Certificate of the Presiding Officer of Saligram Polling station at the foot of Exhibit A-11.
- A-13 (18-12-1951).—Letter written by Sri D. Manjayya Hegde to the petitioner.
- A-15 (8-8-1952).—Notice of Hoilu No. 973/51-52 sent by Sri Dharmastal Manjayya Hegde to Manju Marakla, nephew of Jogi Marakala of Varamballi, village, Udipl Taluk.
- A-14 (8-8-1951).—Notice of Hoilu No. 966/51-52 sent by Sri Dharmastal Manjayya Hegde to Manju Marakala, nephew of Jogi Marakala of Varamballi, village, Udipl Taluk.
- A-16 (9-4-1952).—Notice of Hoilu No. 504/51-52 sent by Sri Dharmastala Manjayya Hegde to Mukambu Heggadthi of Magebettu of Kalthur village, Udipl Taluk.
- A-17 (8-8-1952).—Notice of Hoilu No. 972/51-52 sent by Sri Dharmastala Manjayya Hegde to Shukra Marakala of Kumragodu village, Udipl Taluk.
- A-18 (7-2-1946).—Copy of memorial of Sri D. Manjayya Hegde to the Adviser to His Excellency the Governor of Madras (in charge of the Hindu Religious Endowments).
- A-19 (1943).—A booklet entitled "Sri Kshetra Dharmastala" by Shankernarayana Shastry
- A-20 (3-10-1945).—Office copy of the order of the Board of Commissioners, Hindu Religious Endowments, Madras in C. No. 44476 of 1944 regarding revocation of exemption of Dharmastala temple from the operation of the Hindu Religious Endowments Act.
- A-21 (30-4-1946).—Office copy of the order of the Board of Commissioners, Hindu Religious Endowments, Madras, in O.A. No. 107 of 1946
- A-22 (29-7-1948).—Statement of Sri D. Manjayya Hegde in O.A. No. 245/48 before the Board of Commissioners, Hindu Religious Endowments Board, Madras.
- A-23 (9-3-1949).—Annexure to Board's order No. 1080, dated 9-3-1949 in O.A. No. 245 of 1948.
- A-24 (17-12-1951).—Telegram sent by Sri Y. Manjayya Shetty to Sri Dharmastala Manjayya Hegde.
- A-25.—Draft of a reply telegram sent by Sri D. Manjayya Hegde.
- A-26 (17-12-1951).—Letter written by the petitioner to Sri Dharmastala Manjayya Hegde.
- A-27 (18-12-1951).—Draft of letter written by Sri D. Manjayyan Hegde to the petitioner.
- A-28 (18-12-1951).—Letter written by Subba Rao of Universal Drug House Ltd., Coondapur, to Sri Dharmastal Manjayya Hegde.
- A-29.—Postscript on Exhibit A-28.
- A-30 (24-12-1951).—Draft of the reply letter to Exhibit A-28 from Sri D. Manjayya
- A-31 (30-11-1952).—Witness summons to R.W. 9 in this petition.
- A-32 (1-12-1952).—Witness summons to R.W. 35 in this petition.

- A-33.—Handbill published by Sri K. B. Jinaraja Hegde, candidate for the South Kanara (North) Parliamentary constituency.
- A-34.—Handbill No. 5 issued by the Karnataka Kisan Mazdoor Praja Party, Mangalore.
- A-34(a).—Handbill No. 6 issued by the Karnataka Kisan Mazdoor Praja Party, Mangalore.
- A-34(b).—Handbill No. 7 issued by the Karnataka Kisan Mazdoor Praja Party, Mangalore.
- A-35 (18-12-1951).—Handbill issued by the Kisan Mazdoor Praja Party, Brahmavar

FOR RESPONDENT

- B-1.—Pamphlet published in the pen name of "Nikatavarthi".
- B-2 (24-10-1951).—A pamphlet issued by Sri Dharmastala Manjappa Hegde.
- B-3 (14-10-1951).—Letter written by Sri A. B. Shetty to Sri D. Manjappa Hegde.
- B-4 (7-12-1951).—Copy of statement of Sri D. Manjappa Hegde printed by A. P. & P. Ltd., Coondapur.
- B-5.—Handbill containing copies of Sri Dharmastal Hegde's wire to Sri Y. Manjappa Shetty and of letter to the petitioner regarding the alleged distribution of prasadam.

The following witnesses were examined :

FOR PETITIONER

1. Sri B. Ramakrishna Achar, Manager of Kalyana Press (Udipi).
2. Sri Srinivasa Udupa, Manager of Udaya Printery & Publications, Managlore.
3. Sri B. Ganapayya Shetty, Patel of Balkady.
4. Sri Ananthayya alias Anthayya Shetty of Heroor
5. Sri Annappa Pujary of Varamballi.
6. Sri Srinivasa Udupa of Nalkur.
7. Sri Subbanna Shastri of Nalkur.
8. Sri Sheenappa Shetty, Patel of Harady.
9. Sri Mahabala Shettigara of Varamballi.
10. Sri K. S. Hebbar, Manager of Ajanta Printers, Coondapur.
11. Sri Y. Manjappa Shetty, Advocate, Coondapur.
12. Sri Manjunatha Kamath of Kalthur.
13. Sri Thimmappa Shetty, Teacher-Manager, the Elementary School at Kenjoor.
14. Sri Subbanna Shetty of Kolathur.
15. Sri Anthayya Shetty of Kumragodu.
16. Sri Hiriyanna Shetty of Varamballi.
17. Sri Ramanna Shetty of Pejamangoor.
18. Sri Thowda Poojary of Hosur village.
19. Madi Narayana Shetty of Cherkady.
20. Sri H. Sheenappa Hegde of Kudi.
21. Sri Mahabala Shetty of Neelavar.
22. Sri Shivarama Shetty of Haluvalli.
23. Sri Narayana Udupa, Kukkehalli.
24. Sri H. Shivarama Shetty of Heggunde.
25. Sri T. Angara Pujary of East Thonse.
26. Sri Vittala Hedge of Bellampally.
27. Sri Badiya Shetty of Uppoor.
28. Sri Dejappa Shetty of Nadoor.
29. Sri A. Sheenappa Shetty of Perdoor.
30. Sri U. Narasimha Kalkura of Chitrapady.
31. Sri A. S. Vittal Shetty of Ajri.
32. Sri Ganesh Shanbhogue of Giliyar.

33. Sri Subba Poojary of Madamakki.
34. Sri Manjayya Shetty of Belve.
35. Sri Annappa Shetty of Hiliyana.
36. Sri Deju Marakala of Balakudru.
37. Sri Sooryanna Shetty of Kumragodu.
38. Sri Subbanna Shetty of Hiliyana.
39. Sri Thimmappa Shetty of Uppoor.
40. Sri Paddu Shetty of Shedimane.
41. Sri M. Tejappa Hegde of Molahalli.
42. Sri Manjayya Hegde of Dharmastal (examined on commission).
43. Sri Jagajeevandas Shetty B. (Petitioner).

FOR RESPONDENT

1. Sri H. Krishnaya Shetty of Havanje.
2. Sri Venkatramana Patla of Havanje.
3. Sri Camil Souza of Havanje.
4. Sri Subba Rao, East Tonse, Teacher, Board High School, Udipi.
5. Sri Sanjiva Hegde of Shiriyar village.
6. Sri Narasimha Shetty of Kalavar village.
7. Sri Roche Edward Henry, Teacher, National High School, Barkur.
8. Sri Venkatadasa Adiga, Teacher, National High School, Barkur.
9. Sri Paul Rosario D'Souza of Baikadu.
10. Sri Narayana Shetty of Kudi.
11. Sri Donath Louis of Balakudru.
12. Sri Subraya Bhatta of Moodahadu village.
13. Sri Narasimha Holla of Pandeshwar village.
14. Sri Ananthanarayana Aithala of Balakudru.
15. Sri Dayananda Nayak of East Thonse.
16. Sri M. Venkappa Shetty of Molahally.
17. Sri Govindan Nambyar of Hunsemakki.
18. Sri Jagannatha Shetty of Korgi.
19. Sri Rama Prabhu of Hunsemakki.
20. Sri Srinivasa Upadya of Irody.
21. Sri B. Ramaya Shetty of Hanchalli.
22. Sri Manjayya Shetty, Patel of Shedimane.
23. Sri Sannayya Tholar, Patel of Hengavalli.
24. Sri B. Laxminarayana Rao of Kullanje.
25. Sri V. Narayana Shetty of Vaddarse.
26. Sri Narayana Sooda of Hiliyana.
27. Sri G. Venkatramana Kini of Hardalli-Mandalli.
28. Sri Krishtappa Shetty of Kavadi.
29. Sri Kalavar Shesha Shetty of Hardalli-Mandalli.
30. Sri B. Anthayya Shetty of Handadi.
31. Sri Korgi Subbanna Shetty of Korgi.
32. Sri Ganapathi Kamath of Kalthur.
33. Sri Vasudeva Bhat of Haladi.
34. Sri Sheshagiri Kamath of Kalthur.
35. Sri Srinivasa Udupa of Nalkur.
36. Sri Narasimha Shetty of Heggunge.
37. Sri Rajagopala Shetty of Chedkadl.
38. Sri Bhujanga Shetty of Kodladi.

39. Sri N. S. Kadangode of Hosur.
40. Sri Annayya Marakala of Kukkehalli.
41. Sri G. V. Ailhal, Gundmi.
42. Sri S. S. Kolkebau (Respondent).
43. Sri K. B. Jinaraja Hegde, Advocate, Mangalore.
44. Sri Nagappa Holla of Manur.
45. Padumane Mahabala Shetty of Handadi
46. Sri Srinivasa Shetty of Kumragode.
47. Sri K. Ramappaya, Advocate, Coondapur.
48. Sri K. Narnappaya, Shanbhogue of Dharmasthala temple.

[No. 19/12/52-Elec.III.]

(Sd.) P. T. RAMAN NAYAR, *Chairman.*

(1) (Sd.) M. RAMACHANDER,

(2) (Sd.) K. V. SURYANARAYANA, AYYAR *Members.*

S.R.O. 246.—Whereas the election of Shri Madan Mohan son of Motilal, resident of Parbatsar, District Nagore, as a member of the Legislative Assembly of Rajasthan from the Parbatsar constituency, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Bankat Lal s/o Shri Rambilas of Parbatsar, District Nagore;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, RAJASTHAN, BIKANER.

ELECTION PETITION No. 254 of 1952

CORAM

Shri M. P. Asthana.—*Chairman.*

Shri M. C. Bhandari,

Shri Goverdhandas T. Gajria.—*Members.*

Shri Bankat Lal S/o Ram Bilas, resident of Parbatsar, Distt. Nagaur.—*Petitioner.*

Versus

1. Shri Madan Mohan S/o Motilal, Advocate, resident of Parbatsar, District Nagore.
2. Shri Chandra Datt S/o Deo Karan, Purohit, resident of Parbatsar, District Nagore.
3. Shri Badri Prasad S/o Ganesh Das, Caste Swami, resident of Makrana, Tehsil Parabatsar, District Nagaur.
4. Kunwar Dalipsingh S/o Thakur Salimsingh, of village Badu, P.O. Badu, Tehsil Parbatsar, District Nagaur.
5. Thakur Karansingh S/o Th. Anopsingh of Shampura, village Shampura House No. 11, P.O. Parbatsar, District Nagaur.
6. Thakur Shiv Singh S/o Madhosingh of Peeh, village Peeh, House No. 1, P.O. Peeh, Tehsil Parbatsar, District Nagaur.

Shri Mukut Beharilall Bhargava with Shri Rawatmal Kochar for the petitioner.

Shri B. N. Chanda, Advocate with Shri Gopal Acharya, Advocate for the respondent No. 1.

Respondent No. 3 in person.

JUDGMENT

This petition has been filed by one Bankatlal an elector in the Parbatsar Constituency of the Rajasthan Legislative Assembly, under Section 81 of the Representation of the People Act, 1951, for a declaration that the election of the Respondent No. 1 Shri Madan Mohan, Advocate, to the Rajasthan Legislative Assembly, from the Parbatsar Constituency, held in the month of January, 1952, is void. The petitioner in his petition has alleged (1) that respondents Nos. 1-2 and Badri Prasad, who was added subsequently as respondent No. 3 vide order passed by the Tribunal on 19 November 1952 had filed their nomination papers as candidates from the Parbatsar Constituency, for election to the Rajasthan State Legislative Assembly, on 26th November 1951, out of whom, the nomination paper of Badri Prasad, was rejected by the Returning Officer on 28th November 1951, with the result that only the respondents No. 1 and 2 contested and respondent No. 1 was declared elected, (2) that the Returning Officer committed an error in rejecting the nomination paper of Badri Prasad on the ground that he had omitted to fill up the name of his proposer in the nomination paper, (3) that the Returning Officer should not have rejected the nomination paper on the above ground as the proposer would be identified by his signature and his number on the electoral roll, (4) that the rejection of the nomination paper of Badri Prasad is improper and that it has materially affected the result of the election of the said Constituency, (5) that the respondent No. 1 is disqualified to become a member of the Rajasthan Legislative Assembly in as much as he holds an office of profit in the Rajasthan Government as he is a Government Advocate and receives remuneration from the said Government, and as such the Returning Officer should have rejected his nomination paper, (6) that the respondent No. 1 resorted to corrupt and illegal practices, influenced the voters by unfair methods and procured the votes by influencing public affairs and supplied conveyance for the voters, the details of which have been given in schedule "A" attached with the petition, and (7) that the result of the election to the Rajasthan State Legislative Assembly from the Parbatsar Constituency, has been materially affected by the illegal and improper rejection of the nomination paper of Badri Prasad and improper acceptance of the nomination paper of the respondent No. 1 and also on account of illegal and corrupt practices having been adopted in this constituency. He, therefore, has prayed that the election of the respondent No. 1 from the Parbatsar Constituency to the Rajasthan State Legislative Assembly be declared as void.

The respondent No. 1 who is the successful candidate, has contested the petition, whereas the respondent No. 2 who has appeared, has admitted the allegations made in the petition. The respondent No. 1 in his written statement, has stated (1) that Kunwar Dalipsingh S/o Thakur Salmsingh, Thakur Karansingh S/o Thakur Anopsingh and Thakur Shivsingh of Pech, were also duly nominated candidates from the constituency in question, (2) that the petitioner has not given full details so as to locate his name in the electoral roll of this constituency, (3) that after the rejection of the nomination paper of Badri Prasad and the withdrawal by the above three persons, the election took place between the respondents Nos. 1 and 2 out of whom the respondent No. 1 secured 13897 votes as against 9144 votes secured by the respondent No. 2, (4) that the nomination paper of Badri Prasad has been properly rejected by the Returning Officer, as the same had not been filled in accordance with the mandatory provisions of the Representation of People Act, 1951 and as Badri Prasad has not challenged this order of the Returning Officer, he is satisfied with it, (5) that it is not correct that the identity of the proposer could be ascertained from the particulars given in the nomination paper (6) that the rejection of the nomination paper of Badri Prasad has not materially affected the result of the election in as much as he was publicly stating that he had filed his nomination paper as a dummy candidate and would withdraw in favour of respondent No. 2, (8) that the respondent No. 1 has been declared as elected by an overwhelming majority of 4753 votes and even if Badri Prasad had contested, the result in the triangular contest would have proved more adverse to respondent No. 2 than to respondent No. 1, (9) that Badri Prasad did not wield any influence in this constituency as he belongs to Deedwana-Parbatsar constituency, (10) that the respondent No. 1 does not hold any office of profit under the Rajasthan Government as he is neither a Government Advocate, nor does he get any salary as such but he represents the Government Advocate in certain cases which are sent to him and for which he is paid fees, and this engagement, in no way, is an office of profit which entails any disqualification against him, (11) that the respondent No. 1 denies having resorted to any illegal and corrupt practices as alleged in the petition either himself or through his agents and the said illegal and corrupt practices are vague and incomplete and (12) that the result of the election has not been materially affected by

any of the allegations made against the respondent No. 1. He has further alleged in his further objections that the petition is defective on account of the non-joinder of the three other duly nominated candidates mentioned above and also Badri Prasad whose nomination paper has been rejected, on account of which the petition is liable to be dismissed and that the nomination paper of Badri Prasad was liable to be rejected on other grounds as well viz., (a) that it was defective in as much as his declaration regarding the choice of symbol was wrong, as he had first chosen "TWO BULLOCKS WITH YOKE ON" and then changed it as "CULTIVATOR WIN NOWING GRAIN" by scoring out as his first choice, which is not permissible under Rule 5 of the Representation of the People Act (Conduct of Election and Election Petitions) Rules, 1951 according to which no candidate can choose these two symbols except with the permission of the Returning Officer, the first having been reserved for the Congress candidate and the second for that of Kisan Sabha, (b) that the signatures of the proposer and seconder on the nomination paper, had been obtained by fraud in as much as they were told by Badri Prasad that he was contesting a seat from the Didwana-Parbatsar constituency and not from Parbatsar Constituency, as is clear from the nomination paper itself, in which "Didwana" has been scored off; if the proposer and seconder had been told so, they would never have subscribed to his nomination paper. The details of the fraud alleged are given in para. 4(b) of the written statement of this respondent and (c) that the name of the proposer has been purposely omitted from the nomination paper by Badri Prasad in collusion with the respondent in order to create a fraud for challenging the election of respondent No. 1.

From the above pleadings of the parties, the Tribunal framed the following issues:—

1. Was the nomination paper of Badri Prasad improperly rejected by the Returning Officer? If so, has it materially affected the result of election?
2. Did the respondent No. 1 hold an office of profit in the Rajasthan Government and as such was disqualified to become a member of the Rajasthan Legislative Assembly?
3. Is respondent No. 1 guilty of any corrupt or illegal practices as alleged in paras 3, 4, 6 to 9 and 13 of schedule A? If so, what is the effect?
4. Is the petition bad and defective on account of Badri Prasad, Kr. Dalip-singh, Th. Karan Singh and Th. Shivsingh being not joined as respondents to this petition, and is the petition liable to be rejected on this ground?
5. Was the nomination paper of Badri Prasad liable to be rejected on other grounds as mentioned by respondent No. 1 in para. 4 of the further objections taken in the written statement?
6. To what relief, if any, is the petitioner entitled?

After the framing of the issues, the respondent No. 1 made an application on 17th November 1952 that issue No. 4 may be heard as a preliminary issue and accordingly we heard the parties counsel on this issue and passed an order on 19th November 1952 in which we, after a very careful consideration of the provisions of sections 80, 81, 82, 83, 85, 90 and 98 of the Representation of the People Act, 1951, have come to the conclusion that the non-joinder of some of the duly nominated candidates is not fatal and as such we ordered them to be joined for the purpose of ensuring a fair and effectual trial of the petition. After the issue of notices to the newly joined respondents, only respondent No. 3 Badri Prasad appeared and filed his written statement in which he has admitted the allegations made in the petition, and accordingly no addition in the issues already framed was necessary.

After the joinder of the respondents Nos. 3 to 6, the counsel for respondent No. 1 filed an application in which he asked for an additional issue of limitation, his contention being that on account of the joinder of these persons the petition would be barred by limitation. Accordingly the following issue was framed and put in as Issue No. 7:—

Is the petition barred by limitation as alleged by respondent No. 1?
We will first discuss Issue No. 7.

Issue No. 7.—In this case, as required by Rule 119 (a) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, the petition was filed before the Election Commission on 9th May 1952 within the time prescribed. But the contention of the learned Advocate for the respondent No. 1 is, that on account of the joinder of the four duly nominated candidates as per orders of the Tribunal passed on 19th November 1952, the petition shall be deemed to have been filed on this date when the respondents No. 3 to 6 were ordered to

be joined, and admittedly on this date the petition would be very much beyond the time prescribed under the rules. His contention is that the joinder of the new respondents amounts to an amendment of the petition regarding which the powers of the Tribunal, as provided in section 83(3) of the Representation of the People Act, 1951, are very limited, and since they were necessary parties, as laid down in section 82 of this Act and also as held by the Tribunal in its order of 19th November 1952, the petition was defective and became barred by limitation as a consequence of the joinder of the respondents Nos. 3 to 6. In support of his contention he has referred us to various authorities and also commentary on page 1456 Chitale's O. 1, Q. 10, according to which a suit of appeal shall be deemed to have been filed on the date when any necessary party is added. This is the position under section 22 of the Indian Limitation Act which runs as under:—

- (1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.
- (2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

His main contention is that the Tribunal should not have ordered the joinder of the respondents, Nos. 3 to 6, but should have dismissed the petition for non-compliance of the provisions of section 82 of the Representation of the People Act, 1951. We have in our order of 19th November 1952 discussed in detail the provisions of sections 80 to 83, 85 and 90 of this Act, and we do not think it necessary to say anything more. The learned Advocate for the petitioner has argued that the Representation of the People Act, 1951, is a complete law in itself and unlike the provisions of the Civil Procedure Code and the Indian Evidence Act, about which a provision has been made in sections 83 and 90 of this Act, the provisions of the Indian Limitation Act, do not apply to petitions and consequently section 22 of the Limitation Act will not apply either by analogy or otherwise. The learned counsel for the respondent No. 1 apart from referring us to the various authorities in which section 22 of the Indian Limitation Act, has been applied to suits or appeals, has not been able to show any judgment of an Election Tribunal in which section 22 has been applied to the petitions under section 81 of the Representation of the People Act, 1951. The reason apparently is that the Legislature did not intend to use the word "Necessary Party" in the sense in which it is used in O. 1, R. 10 C.P.C. and also section 22 of the Indian Limitation Act, the provisions of which apply to a party without whose presence no relief can be granted to the other party who is on the record. No doubt the consensus of Judicial opinion expressed by various Election Tribunals is that candidates whose nomination papers have been rejected are also duly nominated candidates, and some of them have not considered it necessary to join them as obviously without the presence of such persons, the Tribunals have felt no difficulty to decide the questions in controversy viz. whether the election of the returned candidate be declared void or not, in which only the petitioner and the successful candidate are directly interested. The Delhi Tribunal, in the case of *Shri Suraj Bhan Vs. Shri Hemchand* being Election Petition No. 3 of 1952, reported in the *Gazette of India Extraordinary* of 19th November 1952, on page 2443, has held that a candidate whose nomination paper has been rejected is not a duly nominated candidate within the provision of S. 82 of the Representation of the People Act, 1952 and have observed as under:—

"We conclude from this that the expression "duly nominated" means a candidate whose nomination has been accepted by the Returning Officer though he may have withdrawn within time. Candidates, who withdrew, are duly nominated candidates but not validly nominated. On this view of the matter, it is clear that those candidates, whose nominations were rejected by the Returning Officer, were not duly nominated candidates, and it was not necessary to join them in the petition. We are satisfied in this conclusion by the provisions contained in section 90 of the Act, which requires the petition to be published and permits any other candidate to appear and ask to be joined in the petition, which apparently refers only to a candidate not "duly nominated". We, therefore, hold that it was not necessary to join the persons mentioned in issue No. 3 to the petition we answer the petition accordingly."

The same question as to the effect of non-joinder of a candidate whose nomination paper had been rejected by the Returning Officer came up for discussion in the case of *Lala Maghraj Vs. Shri Bhimandas* and others, in the Election Petition No. 242

of 1952, before the Ajmer Tribunal, reported on page 1055 of the Gazette of India Extraordinary of 24th December 1952, in which it has been held that non-joinder of such candidate is not fatal to the petition as adequate relief can be granted without his being made a party. However a contrary view appears to have been taken by the Lucknow Tribunal in the case of Shri Pritamsingh Vs. Hon'ble Shri Charan Singh and others, in the election Petition No. 287 of 1952, published in the Government of India Gazette Extraordinary, dated 20th December 1952, on page 1034, in which non-joinder of a "duly nominated" candidate who had subsequently withdrawn has been held to be fatal on the consideration of sections 80, 82, 85, 90(4) and 98(a), and also provisions of O. 1, R. 9 and 10 Code of Civil Procedure (1908) and the Tribunal has referred to 1930 (A.I.R.) Madras 714, which is a case of a suit for settlement of partnership account in which one partner had not been joined. It is very doubtful if the analogy of suits for settlement of partnership accounts or suits for partition of property between co-sharers or suits for administration of property of a deceased person, in which every person, who is either interested in the accounts or the joint property, has got to be joined, can be applied to petitions under the Representation of the People Act, as in the suits referred to above, the matters in controversy can not be finally determined in the absence of persons so interested, who otherwise shall have the right of getting such decrees set aside, whereas this is not the position relating to the election petitions filed under this Act, the provisions of which do not warrant a suggestion of the view adopted by the Lucknow Tribunal. As we have discussed this point in our order of 19th November 1952 in which we have held that the non-joinder of "duly nominated" candidate is not fatal, we think that no question of limitation in case of such candidates being joined later on arises as (i) the provisions of the Indian Limitation Act do not, in our opinion, apply to these petitions which are governed by the provisions of the Representation of People Act, 1951, which is a complete code in itself, and (ii) that to hold that the date of filing of the petition in this case is 19th November 1952, when the respondents Nos. 3 to 6 were ordered to be joined, will be to come to a conclusion that the non-joinder of respondents, is fatal, which according to us, is not the intention of the Legislature on the plain reading of sections 80, 82, 85, 90(4) and 98(a), as we feel that section 98(a) of the Representation of the People Act, does not contemplate dismissal of an election petition on a preliminary objection of non-joinder of a "duly nominated" candidate. If the Legislature meant otherwise, it would have expressed itself in clear and unambiguous terms. By concluding the proposition enunciated by the learned Advocate for the respondent No. 1, we will be reviewing our order, dated 19th November 1952, on the question of non-joinder of respondents Nos. 3 to 6, which we have passed after a full and matured consideration of the relevant provisions of the Representation of the People Act, 1951. So we are of the opinion that no question of limitation, in this case arises, on account of the joinder of respondents Nos. 3 to 6 and we answer this issue accordingly.

Issue No. 6.—It has been contended by respondent No. 1 that the nomination paper of Badri Prasad respondent No. 3 was liable to be rejected on other grounds even, which have been mentioned by him in para. 4 of his further objections in the written statement. These grounds are (1) that Badri Prasad's nomination paper was defective inasmuch as the declaration with regard to the choice of the symbol was wrong as he had first chosen "TWO BULLOCKS WITH YOKE ON" and then substituted it by putting the symbol of "CULTIVATOR WINNOWER GRAIN" as for his first choice; (2) that the signatures of the proposer and the seconder were obtained by Badri Prasad as he gave them to understand that he will be contesting the election as a Congress candidate from the Didwana-Parbatsar constituency and on this understanding the proposer and the seconder subscribed the signatures on the nomination paper of Badri Prasad, but Badri Prasad is said to have made alterations in the nomination paper by scoring out the word "Didwana" from the name of the constituency and also made a change in the choice of the symbols by substituting "Farmer winnowing grain" in place of "Two bullocks with yoke on", and thus utilised the same nomination paper for the purpose of Parbatsar constituency. He further contends that if the proposer and seconder had known that Badri Prasad was to contest the election from the Parbatsar constituency and also if they had known that he was not contesting on the Congress ticket they would have refused to subscribe and support his candidature. Thus fraud was practised on them which vitiated his nomination paper.

So far as this objection is concerned it has not been proved that any fraud was practised upon the proposer and seconder by Badri Prasad as alleged by the respondent No. 1. It has been shown to us that Premchand the proposer was a voter only in Parbatsar constituency whereas Bhawani Shanker the seconder in both the constituencies i.e. Parbatsar and Didwana-Parbatsar. Therefore it does not stand to reason that Premchand could possibly have ever thought of subscribing to the nomination paper of Badri Prasad for Didwana-Parbatsar constituency.

We have gone through the evidence of these two witnesses and find their evidence is not trustworthy on this point. The respondent No. 1 in his evidence has stated that Badri Prasad before filing of the nomination paper requested him to get him a voter for Parbatsar constituency to sign his nomination paper. This statement rather seems to be very unnatural as no candidate would go to the office of the returning officer for the purpose of filing his nomination paper without first arranging for proposer and seconder. It is admitted by respondent No. 1 that he came to know of this fraud practised upon the proposer and seconder by Badri Prasad soon after he filed the nomination paper. If it were so, we think it was his duty to have raised this objection before the returning officer at the time of scrutiny of nomination papers of Badri Prasad. The entire evidence led by respondent No. 1 does not appear to be consistent and believable to prove this allegation. We think that this plea is only an after-thought. Much stress has been laid by the learned advocate for the respondent No. 1 that because Badri Prasad has not been produced in evidence by the petitioner to rebut the evidence led on this point, an adverse inference under section 114 of the Indian Evidence Act should be drawn against the petitioner. But it seems that he has completely ignored the admitted position of law that the burden of proof to establish fraud lies heavily upon the person who alleges it and he must fail if he does not succeed in establishing a *prima facie* case of fraud. The question of leading evidence in rebuttal arises only after the allegations of fraud are *prima facie* made out. It is only then that the burden shifts on the other side. So in this case no question of drawing an adverse inference on account of absence of Badri Prasad from the witness box arises. At the time when the evidence was being led no suggestion was made on behalf of the respondent No. 1 that he would like to examine Badri Prasad, as his own witness or that Badri Prasad should be made available for cross examination.

The next question which arises for consideration is whether the nomination paper of Badri Prasad was liable to be rejected on the ground of his having first given a symbol of "Two bullocks with yoke on" and then substituting it by putting another symbol of "Farmer winnowing grain". It has been argued by the learned Advocate for the respondent No. 1 that previous permission of the Returning officer for choosing the symbol has to be obtained. On this point it was the duty of the respondent No. 1 to have led evidence before us that Badri Prasad did not obtain any such permission. Since this is a question of fact depending upon the evidence which in this case is not available on the record, we can not accept the arguments that no previous permission was obtained by Badri Prasad. The fact that Badri Prasad put in this symbol, on the contrary, suggest that such permission had been given by the Returning Officer. Besides this, absence of previous permission to choose the symbols in the nomination paper is not the defect of a substantial character as even if the symbol of "Two Bullocks with Yoke on" or "Farmer winnowing grain" was the symbol of any particular party, the Returning Officer could allot the second or third symbol to Badri Prasad in case his nomination paper had not been rejected. In view of this discussion we are of opinion that no fraud has been proved by the respondent No. 1 to have been practised by Badri Prasad on the proposer and the seconder and that the choosing of the above symbol by Badri Prasad was not fatal to the nomination paper. We, therefore, hold on this issue that the nomination paper of Badri Prasad could not have been rejected on these grounds.

Issue No. 1.—The learned counsel for the petitioner has contended that the order of the Returning Officer in rejecting the nomination paper of Shri Badri Prasad respondent No. 3 on the ground that the name of the proposer was not written in column 9 of the nomination paper is illegal and wrong inasmuch as (1) it was the duty of the Returning Officer on receiving the nomination paper, to have got the name filled in, as he has got such powers under section 33(5) of the Representation of the People Act, 1951 before scrutiny, or if he had any doubt as to the identity of the proposer he should have satisfied himself after a summary enquiry as laid down in s. 36(2) of the Representation of the People Act, and (2) that the omission of the name of the proposer in column 9 is only a technical defect which is not of a substantial character. The order Exb. 6 passed by the Returning Officer rejecting the nomination paper of Badri Prasad runs as under:—

"I have scrutinised the eligibility of the candidate, the proposer and the seconder and find that the name of the proposer is not there at No. 9. This is an omission of a substantial character. Hence rejected."

We have heard the learned advocates of the petitioner and the respondent No. 1 on this point at good length and we find that there is no decided case which is identical with the facts of this case, which could help us one way or the other. The provisions regarding presentation of nomination paper and requirements for a valid nomination are laid down in s. 33 of the Representation of the People Act,

1951. and according to clause 5 of this section the Returning Officer, on presentation of the nomination paper has to satisfy himself whether the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral roll and he can permit any clerical error in the nomination paper in regard to the said names and numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral roll. After the receipt of the nomination papers the Returning Officer on the date fixed for its scrutiny as provided in section 36(2) of the Representation of the People Act, 1951. has to examine the same and then decide all objections which may be made to any nomination. and may, either on such objection or on his own motion, after such enquiry, if any, as he thinks necessary, refuse any nomination paper on any of the grounds mentioned in this clause. The most important and relevant clause in this section is clause 4 which lays down as under:—

“The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character.”

The original nomination paper has been produced before us and has been marked as Exb. A-6 and we find that the electoral roll number and the signature of the proposer are there on the form, from which the identity of the proposer was not doubted at all by the Returning Officer as is also clear from the order passed by him on the nomination paper. The Returning Officer could reject the nomination paper only on any of the grounds mentioned in s. 36(2) of the Representation of the People Act, 1951 which do not make any mention of the omission to put in the name of the proposer in column 9 to be a ground for rejection of the nomination paper. The idea underlying the provisions of ss. 33 and 36 of this Act, appears to be that the Returning Officer should be satisfied as to the identity of the proposer and the seconder and in this case since the electoral roll number and the signature of the proposer were legibly given in the nomination paper, the Returning Officer should have treated the omission of his name as a defect of technical character as he could see his name in the electoral roll and this should not have rejected the nomination paper. The law requires that the proposer and the seconder should subscribe to the nomination paper and in this case it was done by the proposer and seconder signing the nomination paper. In this connection, the learned Advocate for the petitioner, has referred us to certain judgments of the Election Tribunals in which the question of rejection of the nomination paper on the ground of omission to supply some particulars in the nomination paper, has been discussed in detail. The first case, to which our attention has been invited, is the case of Tika Ram Sharma Vs. Lalit Bahadur Khaya and others, appearing on page 2285 of the Government of India Gazette Extraordinary dated 15th October 1952, in which the nomination paper was rejected on the ground that the parts of the electoral roll were not mentioned in the entries relating to the serial number of the petitioner, his proposer and seconder. The electoral roll in this case consisted of several parts out of which parts A and B were the principal parts and the number of the petitioner whose nomination paper was rejected was 555 in Part A which contained in all 572 electors whereas Part B contained only 131. The Tribunal in this case on page 2292 has made the following observations regarding the duty of the Returning Officer as laid down in sections 33 and 36 of the Representation of the People Act, 1951:—

“In part A of the Roll there are 572 electors and the number of the candidate Tika Ram Sharma is 555. In part B supplementary roll there are only 131 voters. The name of the sub-division being clearly mentioned in the nomination paper, the Returning Officer could at once get help of both the parts of that sub-division and without wasting much time and labour find out the correct entry, from part A.” He could have no occasion to turn to part B which contains only 131 names. There is no question of any doubt as to the identity and eligibility of the candidate. It was not a case of fishing or laborious search as contended by the learned defence counsel. We are of the opinion that the omission to mention the part of sub-division in this case so far as the candidate is concerned, is a very minor technical defect and not at all of a substantial character.

The next case to which our attention has been invited by the learned Advocate of the petitioner is, the case of Thet Gopalramji Vs. Bhatewara Maniklal Amolak Chand reported on page 2421 of the Government of India Gazette Extraordinary dated 15th November, 1952 in which the nomination paper of the petitioner was rejected on the grounds that the candidate had not mentioned the name of the Assembly constituency in items Nos. 7 and 8 of the nomination paper and also the serial numbers of the electoral roll of the constituency. On scrutiny after enquiry the returning officer came to the conclusion that as the candidate had not mentioned

the name of the Assembly constituency in items Nos. 7 and 8, it was not possible for him to know whether they were qualified or not for contesting the election. Consequently he passed the order rejecting the nomination paper. The Tribunal in this case after having discussed the provisions of sub-section 5 of section 33 came to the conclusion that it was the duty of the Returning Officer under sub-section 5 to verify the names and electoral roll numbers of the candidates and their proposers and seconders from the electoral rolls. The duty cast upon the returning officer by sub-section 5 is not merely of a formal character, is clear from the provisions to that sub-section which empowers him to permit the clerical error in the nomination paper in regard to the names or numbers to be corrected in order to bring the nomination paper in conformity with the corresponding entries in the electoral roll. Accordingly it was held by this Election Tribunal that the omission of the name of the constituency from the nomination paper was only of a technical nature which did not render the nomination paper invalid and consequently the election as valid.

The other cases cited by the learned Advocate for the petitioner are reported on pages 2467 and 2527 of the Government of India Extraordinary Gazette dated 21st November 1952, and 5th December, 1952 respectively in which the question which was involved for consideration of the Tribunals was whether the returning officer was justified in refusing some opportunity to the candidate to satisfy him regarding his eligibility to stand as a candidate. The questions involved in these two cases are not quite relevant so far as the present case is concerned.

On the other hand the learned Advocate for respondent No. 1 has contended that the provisions of section 33 of the Representation of the People Act and rule 4 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 are mandatory in as much as the nomination paper should be filled strictly in accordance with these provisions and consequently any omission to comply with these rules is fatal to the validity of a nomination paper. In support of his contention he has cited before us the case of election petition in which the petitioner instead of giving 3 symbols had put in only one symbol and it was held that this was not an omission of technical nature but a substantial one. The other cases which have been referred to by the learned advocate for respondent No. 1 are the Secunderabad case reported on page 2467 of the Government of India Gazette, Extraordinary dated 21st November, 1952 and the West Bengal case of Tikaram Sharma reported on page 2285 of the Government of India Gazette Extraordinary dated 15th October, 1952 which have also been relied upon by the learned counsel of the petitioner. We have very carefully gone through all the cases cited by the learned advocates of both the parties and we are of opinion that provisions of section 33 clause 5 lay down that the duty of the Returning Officer is to satisfy himself whether the names and electoral roll numbers of the candidate, the proposer and seconder as entered in the nomination paper are the same as those entered in electoral roll and the duty cast upon the Returning Officer by this sub-section is not of a formal nature. The Returning Officer in this case at the time of receiving the nomination paper should have seen the nomination paper and allowed the petitioner to have the name of the proposer put in column No. 9 as other particulars of the proposer namely his electoral roll number and signature were quite sufficient to show his identity and eligibility about which the Returning Officer had not entertained any doubt. We do not agree with the contention put forth by the learned advocate for respondent No. 1 that the omission of the proposer's name in this case is of such a material nature that the nomination paper should have been rejected. The intention of the legislature as it appears from sub-section 5 section 33 is very clear, that such omissions should be filled in at the instance of the returning officer by the person or persons concerned. Section 36 sub-section 2 of the Representation of the People Act, 1951 suggests that at the time of scrutiny of the nomination papers the Returning Officer should hold a summary enquiry about the eligibility of the candidate and sub-section 5 specifically lays down that he shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. It appears that the Returning Officer completely ignored the provisions of section 33 clause 5 and section 36 clause 4 of the Representation of the People Act, 1951 as these provisions do not necessarily insist upon such a meticulous accuracy in filling up the nomination paper for which certain instructions have been mentioned in the footnote of the form which require substantial compliance and not a very rigid enforcement of these rules. In this case therefore we come to the conclusion that there has been substantial and sufficient compliance of all the provisions relating to the filling up of the nomination paper by Badri Pershad and that the omission of his name from column No. 9 is only of a technical nature, which does not raise any doubt as his identity and eligibility. Accordingly the Tribunal has come to the conclusion that the nomination paper of Shri Badri Pershad Exb. A-6 was improperly rejected by the Returning Officer.

The next question for our consideration in this case is whether the improper rejection of the nomination paper of Badri Prasad has materially affected the result of the election or not and whether the election on that ground is liable to be declared void. We have already discussed this point in our judgment in case of Chandernath Vs. Kr. Jaswant Singh and others being election petition No. 226 of 1952 pronounced on 15th January 1953, in which we have discussed the latest authorities which have dealt with this question. The consensus of opinion which has been expressed in the various cases right from the Rohtak case decided in 1921 upto this time is that in case of improper rejection of the nomination paper of a candidate, there is a very strong presumption that the result of election has been materially affected. No doubt this presumption has not been held to be irrebuttable but very strong evidence is required to rebut it. The cases which have been decided under section 100 sub-section 1 clause (c) of the Representation of the People Act, 1951 are (1) case of Hansraj Vs. Shri Ramsingh and others being election petition No. 2 of 1952 reported on page 2450 of the Government of India Gazette, Extraordinary dated 19th November 1952, (2) Nrisinha Kumar Vs. Satish Chander Ghosh Maulik being election petition No. 7 of 1952 reported on page 2519 of the Government of India Gazette, Extraordinary, dated 4th December 1952, (3) Baijnath Vs. Chandreshwar Prasad Narainsingh and others being election petition No. 86 of 1952 reported on page 2527 of Government of India Gazette, Extraordinary, dated 5th December 1952, (4) Ramlal Vs. Sujaniram and others reported on page 2481 Government of India Gazette, Extraordinary, dated 27th November 1952 and (5) Prem Nath Vs. Ramkishan reported on page 1017 of Government of India Gazette, Extraordinary, dated 19th December 1952.

The other case in this connection which has been decided by the Lucknow Tribunal is a case of Brejnaresh Singh Vs. Hon'ble Thakur Hukam Singh and others being election petition No. 208 of 1952 reported on page 1029 of Government of India Gazette, Extraordinary, dated 20th December 1952 in which the Tribunal has even gone to the extent of expressing that the presumption which arises in the case of improper rejection of nomination paper viz., that the result of the election has been materially affected is incapable of rebuttal. No doubt in our judgment in the case of Chandernath Vs. Kr. Jaswant Singh, we have not agreed with the view expressed by the Lucknow Tribunal, so now taking the view which has been consistently expressed by the various Tribunals regarding the above presumption we have to consider whether the respondent No. 1 has successfully rebutted the presumption which initially arises in favour of the petitioner.

It has been contended by respondent No. 1 that even if the nomination paper of Badri Prasad had been accepted by the Returning Officer, he would have had absolutely no chance of success specially when the contest would have been triangular in view of the number of votes secured by the respondent No. 1. As a matter of fact it has been settled by the various judicial decisions pronounced in this connection upto this time that the question of success or failure of the candidate whose nomination paper has been rejected can not be the criterion to determine whether the result of election has been materially affected by improper rejection of the nomination paper. It will be too much for us to probe into the minds of electors in order to decide this question as it will be merely a speculation which can not be based on any definite conclusions.

The evidence led on behalf of the respondent No. 1 before us in this case does not prove any special facts to warrant the rebuttal of the presumption. In this connection it was argued by the learned advocate for the respondent No. 1 that the presumption has been rebutted and he has relied upon our judgment in the case of Chandernath Vs. Kr. Jaswant Singh, but the facts of that case were either admitted by the parties or were proved to our satisfaction and we had to draw the conclusion from these facts and it was therefore that we were of the opinion that the presumption in that case according to the nature of the facts, had been rebutted. Therefore this case can not help the respondent No. 1. Besides this the witnesses who have deposed on behalf of the respondent No. 1 that Badri Prasad would not have been successful if he had contested, cannot be said to be experts or authorities regarding the result of election. Even the witnesses examined on behalf of respondent No. 1 are not independent persons but seem to be interested in the respondent No. 1. So we have absolutely no hesitation in coming to the conclusion that the presumption which arises in favour of the petitioner viz., that the result of the election has been materially affected by the improper rejection of the nomination paper of Shri Badri Prasad has not been rebutted and therefore we are of opinion that the election of the Respondent No. 1 becomes void on that account and answer this issue accordingly.

Issue No. 2.—This issue relates to the allegations of the petitioner made in para 7 of his petition namely that the respondent No. 1 was disqualified to become a member of the Rajasthan State Legislative Assembly in as much as he held an

office of profit in Rajasthan Government as he was a Government Advocate and received remuneration from that Government at the time of filing of the nomination paper which according to the petitioner has been improperly accepted. Some evidence and arguments at great length have been advanced before us on this point also. However, in view of our finding on issue No. 1, we do not think it necessary to go into the question whether the respondent No. 1 held any office of profit on the date of filing of the nomination paper.

Issue No. 3.—This issue has been given up by the petitioner's counsel at the time of arguments as he admitted that the evidence adduced was rather very weak. Accordingly we hold that respondent No. 1 has not been guilty of any corrupt or illegal practices as alleged in the schedule attached to the petition and answer the issue accordingly.

Therefore our findings on the issues raised in this case are as follows:—

Issue No. 1.—First part in the affirmative. Second part also in the affirmative.

Issue No. 2. As above.

Issue No. 3.—As above.

Issue No. 4.—In the negative *vide* order dated 19th November 1952.

Issue No. 5.—In the negative.

Issue No. 6.—The election of respondent No. 1 is declared as void.

Issue No. 7.—In the negative.

There remains only a question as to what order should be made about costs. In view of the fact that the election of respondent No. 1 is being declared void on account of no fault of his but due to lack of proper appreciation and observance of the provisions of law by the Returning Officer in dealing with the nomination paper of Badri Prasad and that the petitioner has failed to prove the allegations of corrupt practices etc., we think that we should make no order as to costs. We further observe and are of opinion that this is one of those cases in which the improper rejection of a nomination paper by the Returning Officer, without his mistake being rectified has caused very great hardship, worry and unnecessary expenses to the successful candidate and has made him suffer for no fault of his. But according to the Election Law as it stands, this is unfortunately the position. It is for the Legislature to make necessary changes in the existing Law and consider what would be the best way of making all nominations final and conclusive before the Constituency is required to go to the Polls. It is hardly desirable that such questions be not settled before the elections and be left to be subsequently made the grounds of Election petitions, much to the disappointment of the successful candidates.

(Sd.) M. P. ASTHANA, *Chairman.*

(Sd.) M. C. BHANDARI, *Member.*

(Sd.) GOVERDHANDAS, T. GAJRIA, *Member.*

ORDER

The Election of the Respondent No. 1 to the Rajasthan State Legislative Assembly from the Parbatsar Constituency is declared wholly void. The parties do bear their own costs.

Dated the 24th January, 1953.

(Sd.) M. P. ASTHANA, *Chairman.*

(Sd.) M. C. BHANDARI, *Member.*

(Sd.) GOVERDHANDAS, T. GAJRIA, *Member.*

Pronounced, signed and dated in open court on the 24th January, 1953.

(Sd.) M. P. ASTHANA, *Chairman.*

Election Tribunal Rajasthan, Bikaner.

[No. 19/254/52-Elec. III]

P. S. SUBRAMANIAN,

Officer on Special Duty.